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# **Judiciary Appropriations Committee**

**Thursday, February 9, 2006**

**3:15 p.m.**

**or**

**15 minutes upon adjournment of the Fiscal Council**

**28 House Office Building**



# Florida House of Representatives

Fiscal Council  
Judiciary Appropriations Committee

**Allan Bense**  
Speaker

**Jeff Kottkamp**  
Chair

## Agenda for

Date: Thursday, February 9, 2006

Location: 28 House Office Building, Tallahassee, FL

Time: 3:15 p.m. or 15 minutes upon adjournment of the Fiscal Council

- I. Call to Order
- II. Roll Call
- III. HB 175 by Adams on Drug Court Programs
- IV. Adjournment



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 175 CS

Drug Court Programs

**SPONSOR(S):** Adams and others

**TIED BILLS:**

**IDEN./SIM. BILLS:** CS/CS/SB 114, SB 444

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	8 Y, 0 N, w/CS	Cunningham	Kramer
2) Juvenile Justice Committee	4 Y, 0 N, w/CS	White	White
3) Judiciary Appropriations Committee		Brazzell <i>WB</i>	<i>DeBeaugrine</i>
4) Justice Council			
5)			

### SUMMARY ANALYSIS

The term "drug court" refers to a process by which substance abusers entering the court system are placed into treatment and proactively monitored by the judge and a team of justice-system and treatment professionals. This bill modifies laws regarding drug court programs in dependency, criminal, and delinquency proceedings.

Dependency court is for children who are dependent upon the state to protect them from abuse or neglect by their adult caretaker(s). This bill authorizes a court to order individuals involved in a dependency case to be evaluated for drug or alcohol problems and allows the court, after a finding of dependency, to require an individual to participate in and comply with treatment-based drug court programs. Individuals may voluntarily enter drug court prior to a finding of dependency.

In adult criminal and juvenile delinquency courts, drug court programs have traditionally been structured as pretrial diversion programs. This bill authorizes a court to require postadjudicatory and sentenced offenders to participate in and comply with treatment-based drug court programs. Individuals charged with crimes may voluntarily enter drug court prior to trial.

This bill also provides that counties with treatment-based drug court programs may adopt a protocol of sanctions for noncompliance with program rules. This protocol may include, but is not limited to: (a) placement in specified licensed substance abuse treatment programs; (b) placement in a jail-based treatment program; (c) secure detention; or (d) incarceration. These provisions of the bill address recent case law holding that incarceration or a licensed substance abuse treatment program may not be imposed for noncompliance with pretrial drug court programs as such sanctions are not authorized by current law.

The fiscal impact to state and local governments of this bill is unknown. The language of the bill is permissive (i.e. participation in drug court programs is at the counties' discretion). As such, the bill does not appear to implicate the mandate provisions of Article VII, Section 18 of the Florida Constitution. See Fiscal Analysis & Economic Impact Statement and Applicability of Municipal/County Mandates Provision.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: This bill authorizes the court to order a substance abuse assessment and evaluation, after a shelter petition or dependency petition has been filed, for individuals involved in the case. This bill expands the scope of drug court programs beyond pretrial intervention programs to include dependency drug court, postadjudicatory programs, and the monitoring of sentenced offenders. It also authorizes counties to adopt sanctions for individuals who violate drug court terms and conditions.

Promote Personal Responsibility: This bill provides for court-ordered substance abuse evaluation and treatment and court-monitored compliance with such orders. It also authorizes counties to adopt sanctions for individuals who violate drug court terms and conditions.

Empower Families: This bill increases court responsibilities in dependency court matters.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Proceedings Relating to Children

There are two main court systems specifically tailored for minors. Dependency court is for children who are dependent upon the state to protect them from abuse or neglect by their adult caretaker(s). Delinquency court is for minors who commit crimes that do not warrant transfer to the adult criminal justice system.

In January 1999, the National Center on Addiction and Substance Abuse at Columbia University (CASA) published a report detailing its two-year analysis of the connection between substance abuse and child maltreatment.<sup>1</sup> CASA estimates that substance abuse causes or contributes to 7 out of 10 cases of child maltreatment and accounts for nearly \$10 billion in federal, state, and local spending, exclusive of costs relating to healthcare, operating judicial systems, law enforcement, special education, lost productivity, and privately incurred costs.

The CASA report documented a doubling in the number of child abuse or neglect cases, from 1.4 million cases nationwide in 1986 to nearly 3 million cases in 1997. In connection with the report, CASA conducted a national survey of family court and welfare professionals to ascertain their perceptions of the extent to which substance abuse issues exist in child welfare cases. The survey revealed the following:

- 71.6 percent of respondents cited substance abuse as one of the top three causes for the rise in the number of child abuse and neglect cases.
- Almost 80 percent of respondents stated that substance abuse causes or contributes to at least half of all child abuse and neglect cases while nearly 40 percent stated that substance abuse was a factor in over 75 percent of cases.
- 75.7 percent of respondents believed that children of substance abusing parents were more likely to enter foster care than other children, and more likely to experience longer stays in foster care.
- 42 percent of all caseworkers reported that they were either not required or uncertain if they were required to report substance abuse when investigating child abuse or neglect cases.

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<sup>1</sup> "No Safe Haven: Children of Substance-Abusing Parents," January 1999.

In April 1999, the Department of Health and Human Services issued a report to Congress which highlighted the necessity of prioritizing the identification and treatment of parental substance abuse and its relationship to children in foster care. It stated that children in substance abuse households were more likely than others to be served in foster care, spent longer periods of time in foster care than other children, and were less likely to have left foster care within a year.

### Drug Court System

The original drug court concept was developed in Dade County as a response to a federal mandate to reduce the inmate population or lose federal funding.<sup>2</sup> The Florida Supreme Court reported that a majority of the offenders being incarcerated due to drug-related crimes were "revolving back through the criminal justice system because of underlying problems of drug addiction."<sup>3</sup> The Court felt that the delivery of treatment services needed to be coupled with the criminal justice system, strong judicial leadership, and partnerships to bring treatment and the criminal justice system together.<sup>4</sup>

As of July 2004, 88 drug courts operated in 43 counties.<sup>5</sup> There are 1,183 drug courts nationwide, either operational or in the planning stages, and drug courts are operational in all fifty states.<sup>6</sup>

In Florida, in 2002, approximately 10,200 offenders were referred to drug court. Studies show that drug court graduates experience a significantly reduced rate of recidivism and that drug courts are a cost-effective alternative to incarceration of drug offenders.<sup>7</sup>

Drug courts operate on a reward and punishment system. The reward for successful completion of the program is not only a better life but also lowering of a criminal charge to a lesser offense or even dismissal of the criminal charge. Punishments for failing to comply with the program typically include work assignment, increased treatment modalities, increased court appearances, increased urinalysis testing, community service, house arrest, and incarceration. Failure to comply with the program can also result in the continuation of the criminal process and possible additional jail time upon conviction. Recently, two District Courts of Appeal have ruled that because there is no statutory authorization for the imposition of incarceration or a licensed substance abuse treatment program (specifically an Addiction Receiving Facility) upon violation of a drug court program, such sanctions may not be imposed.<sup>8</sup>

### **Effect of the Bill**

#### Dependency Proceedings

This bill expands existing legislative intent to encourage courts to use the drug court program model and to authorize courts to assess parents and children for substance abuse problems in every stage of the dependency process. This bill establishes the following goals for substance abuse treatment services in the dependency process:

- ensure the safety of children;
- prevent and remediate the consequence of substance abuse;
- expedite permanent placement; and
- support families in recovery.

This bill authorizes a dependency court, upon a showing of good cause, to order a child, or person who has custody or is requesting custody of the child, to submit to substance abuse assessment and evaluation. The assessment and evaluation must be made by a qualified professional, as defined by s.

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<sup>2</sup> Publication by the Florida Supreme Court, *The Florida Drug Court System*, revised January 2004, p.1

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Report on Florida's Drug Courts*, by the Supreme Court Task Force on Treatment-Based Drug Courts, July 2004, p.5

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Diaz v. State*, 884 So.2d 299 (Fla. 2<sup>nd</sup> DCA 2004); *T.N. v. Portes*, 30 FLW D2369 (Fla. 2<sup>nd</sup> DCA October 7, 2005).

397.311, F.S.<sup>9</sup> After an adjudication of dependency, or finding of dependency where adjudication is withheld, the court may require the individual to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation in and compliance with a treatment-based drug court program. Prior to a finding of dependency, participation in treatment, including a treatment-based drug court program, is voluntary. The court, in conjunction with other public agencies, may oversee progress and compliance with treatment and may impose appropriate available sanctions for noncompliance. The court may also make a finding of noncompliance for consideration in determining whether an alternate placement of the child is in the child's best interests.

This bill provides that counties with treatment-based drug court programs may adopt a protocol of sanctions for noncompliance with dependency drug court program rules, which may include, but is not limited to: (a) placement in a substance abuse program offered by a licensed service provider as defined in s. 397.311, F.S.;<sup>10</sup> (b) placement in a jail-based treatment program; (c) secure detention under ch. 985, F.S.;<sup>11</sup> or (d) incarceration within the time limits established for contempt of court (six months).

### Criminal and Juvenile Delinquency Proceedings

Drug court programs typically provide services and monitoring in the pretrial stage of a criminal case. A defendant who successfully completes the drug court program receives the benefit of dismissal of the criminal charge, thereby sparing the defendant from jail and from a permanent criminal record of a conviction. Pretrial drug court programs suspend the setting of a trial date and use the threat of resetting the trial date, and possible conviction, as a means to encourage compliance with the program.

This bill provides that, in addition to pretrial intervention programs, treatment-based drug court programs may include sentenced offenders and offenders in postadjudicatory programs.

This bill specifies that entry into any pretrial treatment-based drug court program is voluntary and that the coordinated strategy adopted by the county for its drug court program, which may include a protocol of sanctions, must be provided in writing to a participant before he or she agrees to enter into a pretrial treatment-based drug court program. A recent court ruling indicates that a participating individual may be allowed to "opt out" of the program if there is an administrative order stating that *participation* in the program is voluntary.<sup>12</sup>

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<sup>9</sup> Section 397.311(24), F.S., defines "qualified professional" to mean "a physician licensed under chapter 458 or chapter 459; a professional licensed under chapter 490 or chapter 491; or a person who is certified through a department-recognized certification process for substance abuse treatment services and who holds, at a minimum, a bachelor's degree. A person who is certified in substance abuse treatment services by a state-recognized certification process in another state at the time of employment with a licensed substance abuse provider in this state may perform the functions of a qualified professional as defined in this chapter but must meet certification requirements contained in this subsection no later than 1 year after his or her date of employment."

<sup>10</sup> Section 397.311(18) defines a "licensed service provider" as, ". . . a public agency under this chapter, a private for-profit or not-for-profit agency under this chapter, a physician or any other private practitioner licensed under this chapter, or a hospital that offers substance abuse impairment services . . ." through one or more of the following licensable service components: (a) an addictions receiving facility; (b) detoxification; (c) intensive inpatient treatment; (d) residential treatment; (e) nonresidential day and night treatment; (f) outpatient treatment; (g) medication and methadone maintenance treatment; (h) prevention; and (i) intervention.

<sup>11</sup> In the event a juvenile violates a dependency drug court treatment program, the court may find that the juvenile committed contempt of court under s. 985.216, F.S., and may securely detain the juvenile if no alternative sanctions are available for up to five days for a first offense and up to 15 days for a second offense.

<sup>12</sup> Section 948.08, F.S. requires that pretrial substance abuse education and treatment intervention programs be approved by the chief judge of the circuit. The court in *Mullin v. Jenne*, 890 So.2d 543 (Fla. 4<sup>th</sup> DCA 2005), referenced this statute and held that where a chief judge's administrative order defining the parameters of the program stated that *participation* in the program was voluntary (rather than *entry*), a court could not require a defendant to remain in a drug court treatment program. The court noted that had the administrative order stated that "entry" into the program was voluntary, a different result would have occurred. Although this bill provides that entry, rather than participation, is voluntary, pretrial substance abuse intervention programs are still, by statute, subject to approval by the chief judge of the circuit. Thus, should a chief judge issue an administrative order stating that participation in a program is voluntary, participating individuals may opt out of the program.

This bill provides that counties with treatment-based drug court programs may adopt a protocol of sanctions for noncompliance with criminal and juvenile delinquency drug court program rules, which may include, but is not limited to: (a) placement in a substance abuse program offered by a licensed service provider as defined in s. 397.311, F.S.;<sup>13</sup> (b) placement in a jail-based treatment program; (c) secure detention under ch. 985, F.S.;<sup>14</sup> or (d) incarceration within the time limits established for contempt of court (six months).<sup>15</sup>

This bill provides that an individual who successfully completes a treatment-based drug court program, if otherwise eligible, may have his or her arrest record and nolo contendere plea expunged.

This bill requires, contingent upon an annual appropriation, each judicial circuit to establish at least one coordinator position for the treatment-based drug court program.<sup>16</sup>

Current law provides that any person eligible for participation in a drug court treatment program may be eligible to have his or her case transferred to a county other than that in which the charge arose if the drug court program agrees and specific conditions are met. The bill specifies that if approval for transfer is received from all parties, the trial court must accept a plea of nolo contendere. The bill further specifies that the jurisdiction to which a case has been transferred is responsible for disposition of the case.

In regard to criminal felony pretrial intervention programs, this bill removes the provision allowing a court or state attorney to deny a defendant's admission to a pretrial substance abuse education and treatment intervention program if the defendant previously declined admission to such a program.

Finally, the bill adds tampering with evidence, solicitation to purchase a controlled substance, and obtaining a prescription by fraud to the list of offenses that make a child eligible for admission into a delinquency pretrial substance abuse education and treatment intervention program.

#### C. SECTION DIRECTORY:

**Section 1.** Names the act the "Robert J. Koch Drug Court Intervention Act."

**Section 2.** Amends s. 39.001(4), F.S., adding legislative intent language regarding substance abuse treatment services in proceedings relating to children.

**Section 3.** Amends s. 39.407, F.S., providing that at any time after a shelter or dependency petition is filed, a court may order a child or a person who has or is requesting custody of a child to submit to substance abuse assessment and evaluation.

**Section 4.** Amends s. 39.507, F.S., providing that after an adjudication of dependency or finding of dependency where adjudication is withheld, the court may order a child or person who has or is requesting custody of a child to submit to substance abuse assessment or evaluation; that the court may require participation and compliance with treatment; providing that the court may oversee progress and compliance with treatment; and that the court may impose sanctions for noncompliance or make a finding of noncompliance for consideration in determining a child's placement.

**Section 5.** Amends s. 39.521(1)(b)1., F.S., providing that when a child is adjudicated dependent, the court may order a child or person who has or is requesting custody of a child to submit to substance

<sup>13</sup> See Footnote 10.

<sup>14</sup> In the event a juvenile violates a delinquency drug court treatment program, the court may securely detain the juvenile if: (a) it finds that the juvenile committed contempt of court under s. 985.216, F.S. (for up to five days for a first offense and up to 15 days for a second offense, if no alternative sanctions are available); or (b) the juvenile has absconded from a drug court treatment program imposed as a condition of probation or conditional release (under s. 985.215(2)(a), F.S., a juvenile who absconds from a probation program or while on conditional release may be held in secure detention for up to 24 hours at which point the court must conduct a detention hearing to determine whether the juvenile's score on the risk assessment instrument warrants continued detention for up to 21 days under s. 985.215(2) and (5)(c), F.S.).

<sup>15</sup> The bill's provision of permissible sanctions would have the effect of overturning the effect of the decisions in *Diaz* and *T.N. Diaz v. State*, 884 So.2d 299 (Fla. 2<sup>nd</sup> DCA 2004) ; *T.N. v. Portesey*, 30 FLW D2369 (Fla. 2nd DCA October 7, 2005). Note that the *Diaz* court suggested that the Legislature make this change.

<sup>16</sup> These positions were established in prior budgets and are currently staffed and funded.



abuse assessment or evaluation; the court may require participation and compliance with treatment; that the court may oversee progress and compliance with treatment; and the court may impose sanctions for noncompliance or make a finding of noncompliance for consideration in determining a child's placement.

**Section 6.** Amends s. 39.701(9)(d), F.S., providing that the court may modify a dependency case plan to require parental/custodian participation in a treatment-based drug court program.

**Section 7.** Amends s. 397.334, F.S., providing that entry into a pretrial treatment-based drug court program is voluntary; expanding the types of treatment-based drug court programs; providing for a protocol of sanctions that may be adopted by a county; and providing a treatment-based drug court program coordinator within each judicial circuit; and permitting a circuit's chief judge to appoint an advisory committee for the drug program.

**Section 8.** Amends s. 910.035(5), F.S., relating to transfers from county for pleas and sentencing.

**Section 9.** Amends s. 948.08, F.S., providing that while in a felony pretrial substance abuse education and treatment intervention program, participants are subject to a coordinated strategy developed by a drug court team and that the coordinated strategy may include a protocol of sanctions for noncompliance with the program.

**Section 10.** Amends s. 948.16, F.S., providing that while in a misdemeanor pretrial substance abuse education and treatment intervention program, participants are subject to a coordinated strategy developed by a drug court team and that the coordinated strategy may include a protocol of sanctions for noncompliance with the program.

**Section 11.** Amends s. 985.306, F.S., expanding the list of crimes for which an offender is eligible for participation in a delinquency pretrial substance abuse education and treatment intervention program and providing that while in a delinquency pretrial substance abuse education and treatment intervention program, participants are subject to a coordinated strategy developed by a drug court team and that the coordinated strategy may include a protocol of sanctions for noncompliance with the program.

**Section 12.** Provides that the act takes effect upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None. This bill does not affect a state revenue source.

#### **2. Expenditures:**

See "Fiscal Comments," below.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None. This bill does not affect a local government revenue source.

#### **2. Expenditures:**

Indeterminate. The language in this bill is permissive and participation in a drug court program will be left to the counties' discretion. Likewise, the bill authorizes counties in their discretion to adopt a protocol of sanctions for individuals who fail to comply with drug court programs. The protocol of sanctions for programs may include jail-based treatment programs, incarceration, and secure detention for noncompliance. These sanctions would result in a cost to the counties. Given the

permissive nature of the drug court programs and sanctions authorized, there is no data to estimate the number of individuals that may be sanctioned under this bill. It should be noted that pretrial intervention programs are already authorized in law and are designed to reduce jail populations and associated costs. Thus, pretrial intervention programs are generally perceived as providing a financial benefit to counties.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may increase the use of private drug assessment and treatment programs. Individuals are often required to pay for services ordered through drug courts.

#### D. FISCAL COMMENTS:

##### Departments of Children and Families and Juvenile Justice

The fiscal impact on state government is indeterminate but expected to be insignificant.

Section 29.008(2), F.S., provides for counties to be responsible for the costs of the state court system to meet local requirements. Since a county may choose whether to implement a drug court system, it is considered a local requirement, and thus drug court funding is a county responsibility. However, decisions made by a judge in the course of drug court proceedings may impact certain state expenditures. Such expenditures primarily include those made by the Department of Children and Families (DCF) for substance abuse treatment and by the Department of Juvenile Justice (DJJ) for detention of juveniles who have committed certain offenses under ch. 985, F.S.

Whether these expenditures are increased significantly depends on (1) whether the bill increases the number of individuals entering drug courts and (2) the degree to which the bill changes the extent to which individuals involved in drug courts access substance abuse treatment services from the DCF or are subject to detention by the DJJ and these departments' abilities to absorb these costs. In regard to (1), the bill's impact on the number of individuals entering drug courts is unclear. While the bill does expand the number of individuals eligible for drug court, it does not appear that it will result in a significant increase. In regard to (2), the bill's impact is also unclear but is likely to be insignificant since the bill primarily codifies in more specific language many drug courts' existing practices. Also:

- The DCF states that it gives priority for funding to individuals involved in the drug court system. It currently funds substance abuse treatment for an estimated 8,602 adults and 2,200 children involved in the drug court system. Based on these factors and the permissiveness of the language, according to the DCF, "the net impact of this legislation may not be significant."
- According to the DJJ, though "it is impossible to accurately calculate the fiscal impact [from the placement of youth in secure detention] due to the lack of specific guidelines for the individual's sanctions", the DJJ estimates a fiscal impact ranging from \$204,825 to \$422,280 or above.<sup>17</sup> However, secure detention is only one of the sanctions (and is one of the more severe sanctions) that could be assessed in a drug court, so not all violators would receive secure detention. Additionally, some youths who would be detained under this bill for violating drug court would likely have received detention anyway, absent the bill, by exiting drug court and re-entering the DJJ system. Also, by making slightly more youth eligible for drug court and thus diverting them from the DJJ system, the bill may lead to some youths not entering DJJ secure

<sup>17</sup> Section 985.215(5)(c), F.S., permits a period of detention up to 21 days for specified offenses, including absconding from a nonresidential commitment program; s. 985.216, F.S., permits a period of detention of up to 5 days for a first offense and up to 15 days for subsequent offenses. Secure detention costs the DJJ \$115 per day, and the average stay is 12 days. DJJ states that according to the Office of the State Courts Administrator (OSCA), 1,798 youth participated in drug court programs during calendar year 2004, not including Broward and Seminole Counties. The DJJ states that the rate of violation in other department diversion programs is approximately 17%. Using these figures and assuming the youth are post-dispositional, detained under s. 985.216, F.S., with 5% second-time violators, DJJ estimates a fiscal impact of \$204,825. Assuming that the youth are post-dispositional and detained under s. 985.215(5)(c), DJJ estimates a fiscal impact of \$422,280. However, since the number of youth participating in drug court does not include those from Broward or Seminole Counties, the fiscal impact could be higher.

detention who otherwise would, though this number is not likely to be significant. Furthermore, it appears that the court can already impose secure detention as a sanction in certain instances. Based on decision tree analysis incorporating these factors, it appears that the fiscal impact on DJJ, while potentially positive, would not be significant.

#### Office of State Courts Administrator

The bill requires the establishment by each judicial circuit, contingent upon appropriations, of a coordinator for the drug court program. However, the Office of State Courts Administrator reports that all judicial circuits already have a drug court coordinator, so there would not be a fiscal impact related to this provision.

Under the implementation of Revision 7 to Article V of Florida's Constitution, the state is obligated to pay from state revenues certain case management costs which include "service referral, coordination, monitoring, and tracking for treatment-based drug court programs under s. 397.334."<sup>18</sup> However, "costs associated with the application of therapeutic jurisprudence principles by the courts" are excluded from the mandated portion of these costs to be borne by the state.<sup>19</sup> Therefore, while costs associated with case management will be paid by the state, to the extent the assessments and treatment described by the provisions of the bill are "therapeutic," they do not appear to have a significant fiscal impact on the state.

#### Committee on Criminal Justice Fiscal Comments

The State Courts Administrator asserts that the costs of evaluation of individuals ordered by a dependency court would be "therapeutic", and therefore not paid by the state under s. 29.004(10), F.S. However, that section is only applicable to "case management services." Section 29.004(6), F.S., provides that the state will be responsible for "expert witnesses not requested by any party which are appointed by the court pursuant to an express grant of statutory authority." If a finding is made that an assessment is not therapeutic, but only explores whether therapeutic services are necessary, then s. 29.004(10), F.S., will not apply and the state may be obligated to pay for the evaluation for indigent persons.

Currently, these assessments are already being ordered and paid for through a variety of sources, including payment by individuals who can afford it. The number of annual assessments is unknown. Also unknown is whether this bill will increase the number of substance abuse assessments ordered. In FY 2002-2003, there were 16,215 dependency cases filed.<sup>20</sup> If 70 percent of cases involve substance abuse, and courts were to order a substance abuse evaluation in each case, this would result in a potential of 11,351 cases with substance abuse evaluations. Note, however, that some cases may involve multiple individuals, but that evaluations may not be ordered where the individual admits to his or her addiction. The estimated cost for an assessment is \$50.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Article VII, Section 18 of the state constitution reads as follows: "No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on

<sup>18</sup> Section 29.004(10)(d), F.S.

<sup>19</sup> Section 29.004(10), F.S.

<sup>20</sup> Trial Court Statistical Reference Guide, published by the Office of State Courts Administrator.

February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.”

The bill’s language is permissive (i.e. participation in drug court programs and adoption of a protocol of sanctions are at the counties’ discretion). As such, the bill does not appear to implicate the mandate provisions of Article VII, Section 18 of the Florida Constitution

2. Other:

The amendments to s. 397.334, F.S. provide that the protocol of sanctions for treatment-based programs authorized in Chapter 39 (dependency proceedings) may include incarceration for noncompliance with the program rules within the time limits established for contempt of court. Thus, an individual participating in a treatment-based drug court program as part of a dependency proceeding may be incarcerated for failing to comply with the program’s terms and conditions. As written, this bill authorizes a court to impose a criminal punishment (incarceration) in a civil proceeding (dependency proceedings are civil proceedings). Although incarceration can be used in civil proceedings as a sanction for criminal and civil contempt, this bill does not specify that incarceration would be the result of contempt proceedings (only that the incarceration may not exceed the time limits established for contempt of court). This could result in a constitutional challenge.

It is uncertain whether the statements that parents or other caregivers make during the substance abuse assessment can be used against them in a criminal proceeding. Although some of the persons who administer assessments may qualify as psychotherapists for purposes of the psychotherapist and patient privilege<sup>21</sup>, the privilege does not apply to statements made in the course of a court-ordered evaluation of the mental or emotional condition of a patient.<sup>22</sup>

Section 7 of this bill provides that offenders who are “postadjudicatory” may be referred to drug court for assessment and treatment of addictions. The ex post facto and double jeopardy clauses may prohibit a court from compelling such a referral for an offender whose offense was committed prior to the effective date of this bill.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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<sup>21</sup> Section 90.503, F.S. The constitutional privilege against self-incrimination relates to protecting the accused from giving an admission of guilt against his or her will. Psychiatric examinations generally require testimonial communications of the person examined and any statements obtained from the patient by the doctor are used as evidence of mental condition only, and not as evidence of the factual truth contained therein, *Parkin v. State*, 238 So.2d 817 (Fla. 1970). A person’s prior substance abuse treatment as part of a plea agreement did not constitute a court-ordered examination under the statute providing that there is no psychotherapist-patient privilege for communications made during a court-ordered examination of the mental conduct of the patient, *Viveiros v. Cooper*, 832 So.2d 868 (Fla. 4<sup>th</sup> DCA 2002).

<sup>22</sup> Section 90.503(4)(b), F.S.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

The Criminal Justice Committee adopted one amendment to the bill. As filed, the bill provides that individuals participating in treatment-based drug court programs are subject to a coordinated strategy that *must* include a protocol of sanctions. The bill also provides that individuals participating in pretrial intervention programs, misdemeanor pretrial substance abuse education and treatment intervention programs, and delinquency pretrial intervention programs are subject to a coordinated strategy that *must* include a protocol of sanctions. The first amendment adopted by the committee made the language of these provisions more permissive by providing that the coordinated strategy *may* include a protocol of sanctions. The first amendment also deletes a provision allowing state attorneys to deny a defendant's admission into a pretrial substance abuse education and treatment intervention program if the defendant previously declined admission to such a program.

The Juvenile Justice Committee adopted two amendments to the bill, which amended its provisions to: (a) consistently provide that counties may, rather than must, adopt specified sanctions for drug court program noncompliance; (b) clarify that the specified sanctions are not exclusive, i.e., counties may adopt other types of sanctions; (c) substitute "substance abuse treatment program offered by a licensed service provider as defined in s. 397.311" for the undefined term "secure licensed clinical program;" and (d) provide that juveniles who fail to comply with drug court programs may be securely detained when permitted under ch. 985, F.S., rather than only when permitted by s. 985.216, F.S., the juvenile contempt of court statute.

HB 175 CS

2006  
CS

CHAMBER ACTION

The Juvenile Justice Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to drug court programs; providing a short title; amending s. 39.001, F.S.; providing additional legislative purposes and intent with respect to the treatment of substance abuse, including the use of the drug court program model; authorizing the court to require certain persons to undergo treatment following adjudication; amending s. 39.407, F.S.; authorizing the court to order specified persons to submit to a substance abuse assessment upon a showing of good cause in connection with a shelter petition or petition for dependency; amending ss. 39.507 and 39.521, F.S.; authorizing the court to order specified persons to submit to a substance abuse assessment as part of an adjudicatory order or pursuant to a disposition hearing; requiring a showing of good cause; authorizing the court to require participation in a treatment-based drug court program; authorizing the court to impose sanctions for noncompliance; amending s. 39.701, F.S.; authorizing the

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24 court to extend the time for completing a case plan during  
25 judicial review, based upon participation in a treatment-  
26 based drug court program; amending s. 397.334, F.S.;  
27 revising legislative intent with respect to treatment-  
28 based drug court programs to reflect participation by  
29 community support agencies, the Department of Education,  
30 and other individuals; including postadjudicatory programs  
31 as part of treatment-based drug court programs; providing  
32 requirements and sanctions, including treatment by  
33 specified licensed service providers, jail-based  
34 treatment, secure detention, or incarceration, for the  
35 coordinated strategy developed by the drug court team to  
36 encourage participant compliance; requiring each judicial  
37 circuit to establish a position for a coordinator of the  
38 treatment-based drug court program, subject to annual  
39 appropriation by the Legislature; authorizing the chief  
40 judge of each judicial circuit to appoint an advisory  
41 committee for the treatment-based drug court program;  
42 providing for membership of the committee; revising  
43 language with respect to an annual report; amending s.  
44 910.035, F.S.; revising language with respect to  
45 conditions for the transfer of a case in the drug court  
46 treatment program to a county other than that in which the  
47 charge arose; amending ss. 948.08, 948.16, and 985.306,  
48 F.S., relating to felony, misdemeanor, and delinquency  
49 pretrial substance abuse education and treatment  
50 intervention programs; deleting a provision allowing a  
51 state attorney to deny a defendant's admission to a

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pretrial substance abuse education and treatment  
intervention program if the defendant previously declined  
admission to such a program; providing for application of  
the coordinated strategy developed by the drug court team;  
removing provisions authorizing appointment of an advisory  
committee, to conform to changes made by the act;  
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "Robert J. Koch  
Drug Court Intervention Act."

Section 2. Subsection (4) of section 39.001, Florida  
Statutes, is amended to read:

39.001 Purposes and intent; personnel standards and  
screening.--

(4) SUBSTANCE ABUSE SERVICES.--

(a) The Legislature recognizes that early referral and  
comprehensive treatment can help combat substance abuse in  
families and that treatment is cost effective.

(b) The Legislature establishes the following goals for  
the state related to substance abuse treatment services in the  
dependency process:

1. To ensure the safety of children.

2. To prevent and remediate the consequences of substance  
abuse on families involved in protective supervision or foster  
care and reduce substance abuse, including alcohol abuse, for



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families who are at risk of being involved in protective supervision or foster care.

3. To expedite permanency for children and reunify healthy, intact families, when appropriate.

4. To support families in recovery.

(c) The Legislature finds that children in the care of the state's dependency system need appropriate health care services, that the impact of substance abuse on health indicates the need for health care services to include substance abuse services to children and parents where appropriate, and that it is in the state's best interest that such children be provided the services they need to enable them to become and remain independent of state care. In order to provide these services, the state's dependency system must have the ability to identify and provide appropriate intervention and treatment for children with personal or family-related substance abuse problems.

(d) It is the intent of the Legislature to encourage the use of the drug court program model established by s. 397.334 and authorize courts to assess parents and children where good cause is shown to identify and address substance abuse problems as the court deems appropriate at every stage of the dependency process. Participation in treatment, including a treatment-based drug court program, may be required by the court following adjudication. Participation in assessment and treatment prior to adjudication shall be voluntary, except as provided in s. 39.407(16).

(e) It is therefore the purpose of the Legislature to provide authority for the state to contract with community

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substance abuse treatment providers for the development and operation of specialized support and overlay services for the dependency system, which will be fully implemented and used ~~utilized~~ as resources permit.

(f) Participation in the treatment-based drug court program does not divest any public or private agency of its responsibility for a child or adult, but is intended to enable these agencies to better meet their needs through shared responsibility and resources.

Section 3. Subsection (15) of section 39.407, Florida Statutes, is amended, and subsection (16) is added to that section, to read:

39.407 Medical, psychiatric, and psychological examination and treatment of child; physical, ~~or~~ mental, or substance abuse examination of parent or person with or requesting child custody of child.--

(15) At any time after the filing of a shelter petition or petition for dependency, when the mental or physical condition, including the blood group, of a parent, caregiver, legal custodian, or other person who has custody or is requesting custody of a child is in controversy, the court may order the person to submit to a physical or mental examination by a qualified professional. The order may be made only upon good cause shown and pursuant to notice and procedures as set forth by the Florida Rules of Juvenile Procedure.

(16) At any time after a shelter petition or petition for dependency is filed, the court may order a child or a person who has custody or is requesting custody of the child to submit to a

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substance abuse assessment and evaluation. The assessment and  
evaluation must be administered by a qualified professional, as  
defined in s. 397.311. The order may be made only upon good  
cause shown. This subsection shall not be construed to authorize  
placement of a child with a person seeking custody, other than  
the parent or legal custodian, who requires substance abuse  
treatment.

Section 4. Subsection (9) is added to section 39.507,  
Florida Statutes, to read:

39.507 Adjudicatory hearings; orders of adjudication.--  
(9) After an adjudication of dependency, or a finding of  
dependency where adjudication is withheld, the court may order a  
child or a person who has custody or is requesting custody of  
the child to submit to a substance abuse assessment or  
evaluation. The assessment or evaluation must be administered by  
a qualified professional, as defined in s. 397.311. The court  
may also require such person to participate in and comply with  
treatment and services identified as necessary, including, when  
appropriate and available, participation in and compliance with  
a treatment-based drug court program established under s.  
397.334. In addition to supervision by the department, the  
court, including the treatment-based drug court program, may  
oversee the progress and compliance with treatment by the child  
or a person who has custody or is requesting custody of the  
child. The court may impose appropriate available sanctions for  
noncompliance upon the child or a person who has custody or is  
requesting custody of the child or make a finding of  
noncompliance for consideration in determining whether an

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alternative placement of the child is in the child's best  
interests. Any order entered under this subsection may be made  
only upon good cause shown. This subsection shall not be  
construed to authorize placement of a child with a person  
seeking custody, other than the parent or legal custodian, who  
requires substance abuse treatment.

Section 5. Paragraph (b) of subsection (1) of section  
39.521, Florida Statutes, is amended to read:

39.521 Disposition hearings; powers of disposition.--

(1) A disposition hearing shall be conducted by the court,  
if the court finds that the facts alleged in the petition for  
dependency were proven in the adjudicatory hearing, or if the  
parents or legal custodians have consented to the finding of  
dependency or admitted the allegations in the petition, have  
failed to appear for the arraignment hearing after proper  
notice, or have not been located despite a diligent search  
having been conducted.

(b) When any child is adjudicated by a court to be  
dependent, the court having jurisdiction of the child has the  
power by order to:

1. Require the parent and, when appropriate, the legal  
custodian and the child, to participate in treatment and  
services identified as necessary. The court may require the  
child or the person who has custody or who is requesting custody  
of the child to submit to a substance abuse assessment or  
evaluation. The assessment or evaluation must be administered by  
a qualified professional, as defined in s. 397.311. The court  
may also require such person to participate in and comply with

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191 treatment and services identified as necessary, including, when  
192 appropriate and available, participation in and compliance with  
193 a treatment-based drug court program established under s.  
194 397.334. In addition to supervision by the department, the  
195 court, including the treatment-based drug court program, may  
196 oversee the progress and compliance with treatment by the child  
197 or a person who has custody or is requesting custody of the  
198 child. The court may impose appropriate available sanctions for  
199 noncompliance upon the child or a person who has custody or is  
200 requesting custody of the child or make a finding of  
201 noncompliance for consideration in determining whether an  
202 alternative placement of the child is in the child's best  
203 interests. Any order entered under this subparagraph may be made  
204 only upon good cause shown. This subparagraph shall not be  
205 construed to authorize placement of a child with a person  
206 seeking custody of the child, other than the child's parent or  
207 legal custodian, who requires substance abuse treatment.

208       2. Require, if the court deems necessary, the parties to  
209 participate in dependency mediation.

210       3. Require placement of the child either under the  
211 protective supervision of an authorized agent of the department  
212 in the home of one or both of the child's parents or in the home  
213 of a relative of the child or another adult approved by the  
214 court, or in the custody of the department. Protective  
215 supervision continues until the court terminates it or until the  
216 child reaches the age of 18, whichever date is first. Protective  
217 supervision shall be terminated by the court whenever the court  
218 determines that permanency has been achieved for the child,

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whether with a parent, another relative, or a legal custodian, and that protective supervision is no longer needed. The termination of supervision may be with or without retaining jurisdiction, at the court's discretion, and shall in either case be considered a permanency option for the child. The order terminating supervision by the department shall set forth the powers of the custodian of the child and shall include the powers ordinarily granted to a guardian of the person of a minor unless otherwise specified. Upon the court's termination of supervision by the department, no further judicial reviews are required, so long as permanency has been established for the child.

Section 6. Paragraph (d) of subsection (9) of section 39.701, Florida Statutes, is amended to read:

39.701 Judicial review.--

(9)

(d) The court may extend the time limitation of the case plan, or may modify the terms of the plan, which, in addition to other modifications, may include a requirement that the parent or legal custodian participate in a treatment-based drug court program established under s. 397.334, based upon information provided by the social service agency, and the guardian ad litem, if one has been appointed, the parent or parents, and the foster parents or legal custodian, and any other competent information on record demonstrating the need for the amendment. If the court extends the time limitation of the case plan, the court must make specific findings concerning the frequency of past parent-child visitation, if any, and the court may

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authorize the expansion or restriction of future visitation.  
Modifications to the plan must be handled as prescribed in s.  
39.601. Any extension of a case plan must comply with the time  
requirements and other requirements specified by this chapter.

Section 7. Section 397.334, Florida Statutes, is amended  
to read:

397.334 Treatment-based drug court programs.--

(1) Each county may fund a treatment-based drug court  
program under which persons in the justice system assessed with  
a substance abuse problem will be processed in such a manner as  
to appropriately address the severity of the identified  
substance abuse problem through treatment services plans  
tailored to the individual needs of the participant. It is the  
intent of the Legislature to encourage the Department of  
Corrections, the Department of Children and Family Services, the  
Department of Juvenile Justice, the Department of Health, the  
Department of Law Enforcement, the Department of Education, and  
such ~~other~~ agencies, local governments, law enforcement  
agencies, ~~and~~ other interested public or private sources, and  
individuals to support the creation and establishment of these  
problem-solving court programs. Participation in the treatment-  
based drug court programs does not divest any public or private  
agency of its responsibility for a child or adult, but enables  
~~allows~~ these agencies to better meet their needs through shared  
responsibility and resources.

(2) Entry into any pretrial treatment-based drug court  
program shall be voluntary. The court may only order an  
individual to enter into a pretrial treatment-based drug court

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275 program upon written agreement by the individual, which shall  
276 include a statement that the individual understands the  
277 requirements of the program and the potential sanctions for  
278 noncompliance.

279       ~~(3)(2)~~ The treatment-based drug court programs shall  
280 include therapeutic jurisprudence principles and adhere to the  
281 following 10 key components, recognized by the Drug Courts  
282 Program Office of the Office of Justice Programs of the United  
283 States Department of Justice and adopted by the Florida Supreme  
284 Court Treatment-Based Drug Court Steering Committee:

285           (a) Drug court programs integrate alcohol and other drug  
286 treatment services with justice system case processing.

287           (b) Using a nonadversarial approach, prosecution and  
288 defense counsel promote public safety while protecting  
289 participants' due process rights.

290           (c) Eligible participants are identified early and  
291 promptly placed in the drug court program.

292           (d) Drug court programs provide access to a continuum of  
293 alcohol, drug, and other related treatment and rehabilitation  
294 services.

295           (e) Abstinence is monitored by frequent testing for  
296 alcohol and other drugs.

297           (f) A coordinated strategy governs drug court program  
298 responses to participants' compliance.

299           (g) Ongoing judicial interaction with each drug court  
300 program participant is essential.

301           (h) Monitoring and evaluation measure the achievement of  
302 program goals and gauge program effectiveness.



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(i) Continuing interdisciplinary education promotes effective drug court program planning, implementation, and operations.

(j) Forging partnerships among drug court programs, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness.

~~(4)(3)~~ Treatment-based drug court programs may include pretrial intervention programs as provided in ss. 948.08, 948.16, and 985.306, treatment-based drug court programs authorized in chapter 39, postadjudicatory programs, and the monitoring of sentenced offenders through a treatment-based drug court program. While enrolled in any treatment-based drug court program, the participant is subject to a coordinated strategy developed by the drug court team under paragraph (3)(f). Each coordinated strategy may include a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules. The protocol of sanctions for treatment-based programs may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider as defined in s. 397.311 or in a jail-based treatment program or serving a period of secure detention under chapter 985 if a child or a period of incarceration within the time limits established for contempt of court if an adult. The coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a pretrial treatment-based drug court program. Any person whose charges are dismissed after successful completion of the treatment-based drug court program, if otherwise eligible, may

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have his or her arrest record and plea of nolo contendere to the dismissed charges expunged under s. 943.0585.

(5) Contingent upon an annual appropriation by the Legislature, each judicial circuit shall establish, at a minimum, one coordinator position for the treatment-based drug court program within the state courts system to coordinate the responsibilities of the participating agencies and service providers. Each coordinator shall provide direct support to the treatment-based drug court program by providing coordination between the multidisciplinary team and the judiciary, providing case management, monitoring compliance of the participants in the treatment-based drug court program with court requirements, and providing program evaluation and accountability.

~~(6)~~(4)(a) The Florida Association of Drug Court ~~Program~~ Professionals is created. The membership of the association may consist of treatment-based drug court program practitioners who comprise the multidisciplinary treatment-based drug court program team, including, but not limited to, judges, state attorneys, defense counsel, treatment-based drug court program coordinators, probation officers, law enforcement officers, community representatives, members of the academic community, and treatment professionals. Membership in the association shall be voluntary.

(b) The association shall annually elect a chair whose duty is to solicit recommendations from members on issues relating to the expansion, operation, and institutionalization of treatment-based drug court programs. The chair is responsible for providing on or before October 1 of each year the

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359 association's recommendations and an annual report to the  
360 appropriate Supreme Court ~~Treatment Based Drug Court Steering~~  
361 committee or to the appropriate personnel of the Office of the  
362 State Courts Administrator, ~~and shall submit a report each year,~~  
363 ~~on or before October 1, to the steering committee.~~

364 (7)(5) If a county chooses to fund a treatment-based drug  
365 court program, the county must secure funding from sources other  
366 than the state for those costs not otherwise assumed by the  
367 state pursuant to s. 29.004. However, this does not preclude  
368 counties from using treatment and other service dollars provided  
369 through state executive branch agencies. Counties may provide,  
370 by interlocal agreement, for the collective funding of these  
371 programs.

372 (8) The chief judge of each judicial circuit may appoint  
373 an advisory committee for the treatment-based drug court  
374 program. The committee shall be composed of the chief judge, or  
375 his or her designee, who shall serve as chair; the judge of the  
376 treatment-based drug court program, if not otherwise designated  
377 by the chief judge as his or her designee; the state attorney,  
378 or his or her designee; the public defender, or his or her  
379 designee; the treatment-based drug court program coordinators;  
380 community representatives; treatment representatives; and any  
381 other persons the chair finds are appropriate.

382 Section 8. Paragraphs (b) and (e) of subsection (5) of  
383 section 910.035, Florida Statutes, are amended to read:

384 910.035 Transfer from county for plea and sentence.--

385 (5) Any person eligible for participation in a drug court  
386 treatment program pursuant to s. 948.08(6) may be eligible to

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have the case transferred to a county other than that in which the charge arose if the drug court program agrees and if the following conditions are met:

(b) If approval for transfer is received from all parties, the trial court shall accept a plea of nolo contendere and enter a transfer order directing the clerk to transfer the case to the county which has accepted the defendant into its drug court program.

(e) Upon successful completion of the drug court program, the jurisdiction to which the case has been transferred shall dispose of the case pursuant to s. 948.08(6). If the defendant does not complete the drug court program successfully, the jurisdiction to which the case has been transferred shall dispose of the case within the guidelines of the Criminal Punishment Code ~~case shall be prosecuted as determined by the state attorneys of the sending and receiving counties.~~

Section 9. Subsections (6), (7), and (8) of section 948.08, Florida Statutes, are amended to read:

948.08 Pretrial intervention program.--

(6)(a) Notwithstanding any provision of this section, a person who is charged with a felony of the second or third degree for purchase or possession of a controlled substance under chapter 893, prostitution, tampering with evidence, solicitation for purchase of a controlled substance, or obtaining a prescription by fraud; who has not been charged with a crime involving violence, including, but not limited to, murder, sexual battery, robbery, carjacking, home-invasion robbery, or any other crime involving violence; and who has not

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previously been convicted of a felony nor been admitted to a felony pretrial program referred to in this section is eligible for voluntary admission into a pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program established pursuant to s. 397.334, approved by the chief judge of the circuit, for a period of not less than 1 year in duration, upon motion of either party or the court's own motion, except:

~~1. If a defendant was previously offered admission to a pretrial substance abuse education and treatment intervention program at any time prior to trial and the defendant rejected that offer on the record, then the court or the state attorney may deny the defendant's admission to such a program.~~

2. if the state attorney believes that the facts and circumstances of the case suggest the defendant's involvement in the dealing and selling of controlled substances, the court shall hold a preadmission hearing. If the state attorney establishes, by a preponderance of the evidence at such hearing, that the defendant was involved in the dealing or selling of controlled substances, the court shall deny the defendant's admission into a pretrial intervention program.

(b) While enrolled in a pretrial intervention program authorized by this section, the participant is subject to a coordinated strategy developed by a drug court team under s. 397.334(3). The coordinated strategy may include a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse

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443 treatment program offered by a licensed service provider as  
444 defined in s. 397.311 or in a jail-based treatment program or  
445 serving a period of incarceration within the time limits  
446 established for contempt of court. The coordinated strategy must  
447 be provided in writing to the participant before the participant  
448 agrees to enter into a pretrial treatment-based drug court  
449 program or other pretrial intervention program.

450 (c) ~~(b)~~ At the end of the pretrial intervention period, the  
451 court shall consider the recommendation of the administrator  
452 pursuant to subsection (5) and the recommendation of the state  
453 attorney as to disposition of the pending charges. The court  
454 shall determine, by written finding, whether the defendant has  
455 successfully completed the pretrial intervention program.

456 ~~(e)1.~~ If the court finds that the defendant has not  
457 successfully completed the pretrial intervention program, the  
458 court may order the person to continue in education and  
459 treatment, which may include substance abuse treatment programs  
460 offered by licensed service providers as defined in s. 397.311  
461 or jail-based treatment programs, or order that the charges  
462 revert to normal channels for prosecution.

463 ~~2.~~ The court shall dismiss the charges upon a finding that  
464 the defendant has successfully completed the pretrial  
465 intervention program.

466 (d) Any entity, whether public or private, providing a  
467 pretrial substance abuse education and treatment intervention  
468 program under this subsection must contract with the county or  
469 appropriate governmental entity, and the terms of the contract

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must include, but need not be limited to, the requirements established for private entities under s. 948.15(3).

~~(7) The chief judge in each circuit may appoint an advisory committee for the pretrial intervention program composed of the chief judge or his or her designee, who shall serve as chair; the state attorney, the public defender, and the program administrator, or their designees; and such other persons as the chair deems appropriate. The advisory committee may not designate any defendant eligible for a pretrial intervention program for any offense that is not listed under paragraph (6)(a) without the state attorney's recommendation and approval. The committee may also include persons representing any other agencies to which persons released to the pretrial intervention program may be referred.~~

~~(7)(8)~~ The department may contract for the services and facilities necessary to operate pretrial intervention programs.

Section 10. Section 948.16, Florida Statutes, is amended to read:

948.16 Misdemeanor pretrial substance abuse education and treatment intervention program.--

(1) (a) A person who is charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under chapter 893, and who has not previously been convicted of a felony nor been admitted to a pretrial program, is eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program established pursuant to s. 397.334, approved by the chief judge of the circuit, for a

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498 period based on the program requirements and the treatment plan  
499 for the offender, upon motion of either party or the court's own  
500 motion, except, if the state attorney believes the facts and  
501 circumstances of the case suggest the defendant is involved in  
502 dealing and selling controlled substances, the court shall hold  
503 a preadmission hearing. If the state attorney establishes, by a  
504 preponderance of the evidence at such hearing, that the  
505 defendant was involved in dealing or selling controlled  
506 substances, the court shall deny the defendant's admission into  
507 the pretrial intervention program.

508 (b) While enrolled in a pretrial intervention program  
509 authorized by this section, the participant is subject to a  
510 coordinated strategy developed by a drug court team under s.  
511 397.334(3). The coordinated strategy may include a protocol of  
512 sanctions that may be imposed upon the participant for  
513 noncompliance with program rules. The protocol of sanctions may  
514 include, but is not limited to, placement in a substance abuse  
515 treatment program offered by a licensed service provider as  
516 defined in s. 397.311 or in a jail-based treatment program or  
517 serving a period of incarceration within the time limits  
518 established for contempt of court. The coordinated strategy must  
519 be provided in writing to the participant before the participant  
520 agrees to enter into a pretrial treatment-based drug court  
521 program or other pretrial intervention program.

522 (2) At the end of the pretrial intervention period, the  
523 court shall consider the recommendation of the treatment program  
524 and the recommendation of the state attorney as to disposition  
525 of the pending charges. The court shall determine, by written



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finding, whether the defendant successfully completed the pretrial intervention program.

~~(a)~~ If the court finds that the defendant has not successfully completed the pretrial intervention program, the court may order the person to continue in education and treatment or return the charges to the criminal docket for prosecution.

~~(b)~~ The court shall dismiss the charges upon finding that the defendant has successfully completed the pretrial intervention program.

(3) Any public or private entity providing a pretrial substance abuse education and treatment program under this section shall contract with the county or appropriate governmental entity. The terms of the contract shall include, but not be limited to, the requirements established for private entities under s. 948.15(3).

Section 11. Section 985.306, Florida Statutes, is amended to read:

985.306 Delinquency pretrial intervention program.--

(1)~~(a)~~ Notwithstanding any provision of law to the contrary, a child who is charged ~~under chapter 893~~ with a felony of the second or third degree for purchase or possession of a controlled substance under chapter 893; tampering with evidence; solicitation for purchase of a controlled substance; or obtaining a prescription by fraud, and who has not previously been adjudicated for a felony ~~nor been admitted to a delinquency pretrial intervention program under this section~~, is eligible for voluntary admission into a delinquency pretrial substance

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abuse education and treatment intervention program, including a  
treatment-based drug court program established pursuant to s.  
397.334, approved by the chief judge or alternative sanctions  
 coordinator of the circuit to the extent that funded programs  
 are available, for a period based on the program requirements  
and the treatment services that are suitable for the offender ~~of~~  
~~not less than 1 year in duration~~, upon motion of either party or  
 the court's own motion. However, if the state attorney believes  
 that the facts and circumstances of the case suggest the child's  
 involvement in the dealing and selling of controlled substances,  
 the court shall hold a preadmission hearing. If the state  
 attorney establishes by a preponderance of the evidence at such  
 hearing that the child was involved in the dealing and selling  
 of controlled substances, the court shall deny the child's  
 admission into a delinquency pretrial intervention program.

(2) While enrolled in a delinquency pretrial intervention  
program authorized by this section, a child is subject to a  
coordinated strategy developed by a drug court team under s.  
397.334(3). The coordinated strategy may include a protocol of  
sanctions that may be imposed upon the child for noncompliance  
with program rules. The protocol of sanctions may include, but  
is not limited to, placement in a substance abuse treatment  
program offered by a licensed service provider as defined in s.  
397.311 or serving a period of secure detention under this  
chapter. The coordinated strategy must be provided in writing to  
the child before the child agrees to enter the pretrial  
treatment-based drug court program or other pretrial  
intervention program.

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(3)~~(b)~~ At the end of the delinquency pretrial intervention period, the court shall consider the recommendation of the state attorney and the program administrator as to disposition of the pending charges. The court shall determine, by written finding, whether the child has successfully completed the delinquency pretrial intervention program.

~~(e)~~1. If the court finds that the child has not successfully completed the delinquency pretrial intervention program, the court may order the child to continue in an education, treatment, or urine monitoring program if resources and funding are available or order that the charges revert to normal channels for prosecution.

2. The court may dismiss the charges upon a finding that the child has successfully completed the delinquency pretrial intervention program.

(4)~~(d)~~ Any entity, whether public or private, providing pretrial substance abuse education, treatment intervention, and a urine monitoring program under this section must contract with the county or appropriate governmental entity, and the terms of the contract must include, but need not be limited to, the requirements established for private entities under s. 948.15(3). It is the intent of the Legislature that public or private entities providing substance abuse education and treatment intervention programs involve the active participation of parents, schools, churches, businesses, law enforcement agencies, and the department or its contract providers.

~~(2) The chief judge in each circuit may appoint an advisory committee for the delinquency pretrial intervention~~

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610 | ~~program composed of the chief judge or designee, who shall serve~~  
611 | ~~as chair; the state attorney, the public defender, and the~~  
612 | ~~program administrator, or their designees, and such other~~  
613 | ~~persons as the chair deems appropriate. The committee may also~~  
614 | ~~include persons representing any other agencies to which~~  
615 | ~~children released to the delinquency pretrial intervention~~  
616 | ~~program may be referred.~~

617 |       Section 12. This act shall take effect upon becoming a  
618 | law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. 175 CS

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

1 Council/Committee hearing bill: Judiciary Appropriations

2 Representative Adams offered the following:

3  
4 **Amendment**

5 Remove line 97 and insert:

6 and authorize courts to assess children and persons who have  
7 custody or are requesting custody of children where good

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## Amendment No. 2

COUNCIL/COMMITTEE ACTION

OTHER \_\_\_\_\_

substance abuse assessment or evaluation. The assessment or

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3

Bill No. 175 CS

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Judiciary Appropriations

Representative Adams offered the following:

**Amendment**

Remove line 138 and insert:

cause shown. This subsection does not authorize

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 4

Bill No. 175 CS

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Judiciary Appropriations  
Representative Adams offered the following:

**Amendment**

Remove lines 165-166 and insert:

only upon good cause shown. This subsection does not  
authorize placement of a child with a person

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 5

Bill No. 175 CS

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Judiciary Appropriations

Representative Adams offered the following:

**Amendment**

Remove lines 204-205 and insert:

only upon good cause shown. This subparagraph does not  
authorize placement of a child with a person

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 6

Bill No. 175 CS

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Judiciary Appropriations  
Representative Adams offered the following:

**Amendment (with title amendment)**

Remove lines 231-250.

===== T I T L E A M E N D M E N T =====

Remove lines 23-26 and insert:  
noncompliance; amending 397.334, F.S.;

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 7

Bill No. 175 CS

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Judiciary Appropriations  
Representative Adams offered the following:

**Amendment (with title amendment)**

Remove lines 422-428 and insert:

either party or the court's own motion, except:

1. If a defendant was previously offered admission to a pretrial substance abuse education and treatment intervention program at any time prior to trial and the defendant rejected that offer on the record, then the court, upon motion of ~~or~~ the state attorney, may deny the defendant's admission to such a program.

2. if the state attorney believes that the facts and

===== T I T L E A M E N D M E N T =====

Remove lines 50-54 and insert:

intervention programs; providing for application of

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## Amendment No. 8

COUNCIL/COMMITTEE ACTION

OTHER \_\_\_\_\_

authorized by this subsection, the participant is subject to a

Jud Amend 8.doc